



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2017-0191]

Requirements Regarding Mandatory Review for Declassification

AGENCY: Nuclear Regulatory Commission.

ACTION: Mandatory Review for Declassification; notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is updating its requirements regarding Mandatory Review for Declassification pursuant to Section 3.5 of Executive Order (E.O.) 13526, "Classified National Security Information." The NRC's requirements regarding Mandatory Review for Declassification were previously published in the *Federal Register* on November 5, 1996. This notice informs the public of these updates. This notice also presents instructions for submitting suggestions or questions regarding the NRC's information security program.

DATES: The requirements are available as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please refer to Docket ID NRC-2017-0191 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0191. Address questions about NRC dockets to Carol Gallagher;

telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "[Begin Web-based ADAMS Search.](#)" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Darryl H. Parsons, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-7751, e-mail: Darryl.Parsons@nrc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order (E.O.) 13526, issued on December 29, 2009, and published in the *Federal Register* on January 5, 2010 (75 FR 707), and part 2001 of title 32 of the *Code of Federal Regulations*, "Classified National Security Information," published June 28, 2010 (75 FR 37254), the NRC is updating its mandatory review for declassification requirements to read as follows:

- I. Mandatory Review for Declassification Requirements

- A. NRC information classified under E.O. 13526 or predecessor orders shall be subject to a review for declassification by NRC, if:
1. The request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;
 2. The document or material containing the information responsive to the request is not contained within an operational file exempted from search and review, publication, and disclosure under section 552 of title 5, *United States Code* in accordance with law; and
 3. The information is not the subject of pending litigation.
- B. Any person desiring a mandatory review for declassification of NRC documents containing classified information should address these requests to the Director, Division of Security Operations, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.
- C. Requests need not be made on any special form, nor does the requested information have to be identified by date or title, but shall, as specified in E.O. 13526, describe the information with sufficient specificity to enable the NRC to locate the records containing the information sought with a reasonable amount of effort. Requests for broad types of information, entire file series of records, or similar non-specific requests may be denied a mandatory review for declassification by the NRC.
- D. The Director, Division of Security Operations, Office of Nuclear Security and Incident Response, will acknowledge receipt of the request and initiate action to obtain the requested information.

- E. If the information contained in the requested matter has been reviewed for declassification within the past 2 years, another review need not be conducted, but instead the NRC may inform the requester of this fact and of the results of the prior review decision and advise the requester of appeal rights.
- F. Documents required to be submitted for pre-publication review or other administrative process pursuant to an approved nondisclosure agreement are not subject to mandatory declassification review (MDR).
- G. The NRC performs an MDR as follows:
1. Conducts a line-by-line review of the matter.
 2. Withholds any information that meets the standards for classification under E.O. 13526.
 3. Declassifies National Security Information under the NRC's purview that no longer meets the standards for classification under E.O. 13526 or successor orders.
 4. If the matter is originated by another agency, the NRC will refer the request and pertinent records to the originating agency, unless the originating agency has agreed that the NRC may review its records in accordance with the declassification guides or guidelines provided by the originating agency. If referred, the originating agency will process the request in accordance with its agency's procedures for mandatory review for declassification and communicate its determination to the NRC. The NRC will be responsible for collecting all agency review results and informing the requester of any final decision regarding the declassification of the requested information unless a prior arrangement has been made with the originating agency. Requests for an MDR made to an

element of the Intelligence Community by anyone other than a citizen of the United States or an alien lawfully admitted for permanent residence may be denied by the receiving Intelligence Community element.

5. If the matter is marked as, or potentially contains, Restricted Data, Formerly Restricted Data, or Transclassified Foreign Nuclear Information, then the MDR is processed in accordance with 10 CFR part 1045, "Nuclear Classification and Declassification."
6. If the matter contains cryptologic information then the NRC shall process the MDR in accordance with special procedures issued by the Secretary of Defense and, when cryptologic information pertains to intelligence activities, the Director of National Intelligence.
7. If the matter contains information pertaining to intelligence sources, methods, and activities then the NRC shall process the MDR in accordance with the special procedures issued by the Director of National Intelligence.
8. If the matter contains foreign government information and the NRC initially received or classified the foreign government information, then the NRC shall be responsible for making a declassification determination after consultation with concerned governments/agencies. If the NRC did not initially receive or classify the foreign government information, the NRC shall refer the request to the agency that received or classified the foreign government information for appropriate action. In all instances, the NRC may consult with the foreign government(s) through appropriate channels prior to declassification.
9. If the matter also contains unclassified information that is potentially exempt from release under the Freedom of Information Act, the matter is further processed to

ensure unclassified information that is exempt from public release is identified and that the appropriate officials responsible for denying any classified portion of the matter are provided and listed with the notice of denial.

10. When information cannot be declassified in its entirety, the NRC will make reasonable efforts to release, consistent with other applicable laws, those declassified portions of the requested information that constitute a coherent segment.

11. A final determination shall be made on each request within 1 year from the date of receipt.

12. Upon completion of the review, the NRC releases the information to the requester, unless that information is prohibited from release under the provisions of a statutory authority.

13. Upon denial, in whole or in part, of an initial request, the NRC's response shall also notify the requester of the right to an administrative appeal.

H. When the Director, Division of Security Operations, Office of Nuclear Security and Incident Response, denies the release of classified matter requested under an MDR, the requester may appeal the determination to the NRC within 60 days of receipt of the denial.

I. The appeal must be in writing and submitted to the Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

The appeal:

1. Must include reference to the determination being appealed; and
2. Should specify why the requester believes the information does not warrant classification.

- J. The NRC shall normally make a determination within 60 working days following the receipt of an appeal. If additional time is required in rendering a decision, the NRC will notify the requester of the additional time needed and the reason for the extension.
- K. The NRC will notify the requester in writing of the final decision and of the reason(s) for any denial. The NRC may refuse to confirm or deny the existence or nonexistence of the requested information whenever the fact of its existence or nonexistence is itself classified under E.O. 13526 or successor orders.
- L. If the appeal has been denied, the NRC shall notify the requester in writing of the right to appeal the final NRC decision to the Interagency Security Classification Appeals Panel (ISCAP). The rules and procedures for bringing mandatory declassification appeals before the ISCAP are published in "The Interagency Security Classification Appeals Panel (ISCAP) Bylaws, Rules, and Appeal Procedures," dated July 9, 2012 (77 FR 40261). The appeal to the ISCAP must be filed within 60 days of:
 - 1. The date of the final agency decision;
 - 2. The agency's failure to provide an initial decision on the request for an MDR from the agency within 1 year of its filing; or
 - 3. The agency's failure to provide a final decision on an agency-level appeal within 180 days of the filing of the appeal.
- M. Charges for services (e.g., locating and reproducing copies of records) will be made, when deemed applicable, in accordance with NRC regulations and will be consistent with charges for information requested under section 9701 of title 31, *United States*

Code and the NRC's regulations implementing the Freedom of Information Act (10 CFR 9.35—Duplication Fees), or the Privacy Act (10 CFR 9.85—Fees).

II. Instructions for submitting suggestions or questions regarding the NRC's Classified Information Security Program

Requirements regarding the NRC's Classified Information Security Program are contained in NRC Management Directive 12.2, "NRC Classified Information Security Program," which is available for review and printing in ADAMS under Accession No. ML14142A085. Suggestions or questions regarding NRC's Classified Information Security Program should be submitted in writing to the U.S. Nuclear Regulatory Commission, Director, Division of Security Operations, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission Washington, DC 20555-0001.

Dated at Rockville, Maryland, this 18th day of September, 2017.

For the U.S. Nuclear Regulatory Commission,

Michael R. Johnson,
Acting Executive Director for Operations.

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